

***United States Court of Appeals  
for the Second Circuit***



**APPELLANT'S  
BRIEF &  
APPENDIX**



75-2034

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P/S

~~NO. 74-8429~~

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IN-THE  
UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

\_\_\_\_\_  
RICARDO BORROTO,

Petitioner-Appellant

vs.

WARDEN, FED. HOUSE OF DETENTION, ET AL,  
Respondents-Appellees.

\_\_\_\_\_  
On Appeal from the United States District Court  
For the Southern District of New York

\_\_\_\_\_  
APPELLANT'S BRIEF AND APPENDIX  
\_\_\_\_\_

Gerardo Sanchez  
Next-Friend Applicant for  
Appellant. At his request  
and on his behalf.  
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New York, NY 10033  
(212) 781-8541

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UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

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RICARDO BORROTO

Petitioner-Appellant

vs.

WARDEN, FED. HOUSE OF DETENTION, ET AL  
Respondents-Appellees.

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PRELIMINARY STATEMENT

This is an appeal from an Order by the H. Inzer B. Wyatt of the United States District Court for the Southern District of New York, rendered December 13, 1974, denying an application for an Order against the Warden of the Federal House of Detention, compelling him to do his duty by not barring appellant Borroto's interpreter-law assistant from the Detention Center, interfering therefore with Borroto's right of access to the courts and right to obtain legal assistance to facilitate such access.

## STATEMENT OF FACTS

The appellant, Ricardo Borroto, is incarcerated and in the custody of the Warden of the Federal House of Detention, 427 West Street, New York, N.Y. 10014, within the Southern District of New York, serving the last 5 months of a 9 years sentence.

He has a few legal actions pending in various U.S. District Courts. Some of them are on appeal, in different U.S. Circuit - Courts of Appeals. He does not speak English fluently, is not entitled to a lawyer, and has been assisted by an interpreter-friend and law assistant in all his petitions and communications with - the Courts.

The Warden of the Federal House of Detention has no objections to the visits and assistance of the interpreter to Borroto, but barred such assistance at the request of Silvio Mollo, an - Assistant U.S. Attorney.

Appellant filed a Petition with Judge Wyatt, challenging the action of the Warden by Order of the U.S. Attorney, his adversary, under our System of Criminal Justice, denying him his right of access to the courts and his right to obtain legal assistance to facilitate such access. The Court issued a Show Cause Order, yet no answering papers of any kind were served by any respondent. At the hearing, respondents made no motions against the relief sought by Petitioner-Appellant. It was solely Judge Wyatt, sua sponte, who made his own motion to deny the Mandamus relief sought.



POINT I

THE DISTRICT JUDGE A QUO SOLELY DETERMINED THE PROCEEDING AGAINST PETITIONER BORROTO ON THE SINGLE BASIS THAT HE HAD NO SUBJECT -  
MATTER JURISDICTION TO GRANT ANY RELIEF ENJOINING AN UNFAIR -  
VISITOR'S ADMISSION DECISION.

The minutes of the very, very brief oral hearing before Hon. Judge Wyatt show that as a ground for denial of relief he claimed:

"What you are trying to do is to get the Court to substitute my administrative powers, which are very limited, in place of those of the Warden."  
(MINUTES, page 2, lines 19-22)

The exclusion of a paraprofessional aid to a prisoner raises a constitutional question, which indeed, is triable in the District Court as relief is duly sought. In Procunier v. Martinez 416 US 396, the Supreme Court specifically held that a prisoner's rights were unconstitutionally abridge by a state prison administrative rule which entirely proscribed inmate access to paraprofessionals. And that prison rules affecting this right must pass the basic due process test of reasonability.

The Court of Appeals for the First Circuit dealt with a similar situation in Souza v. Travisono 498 F2d. 1120 (1974) affirming a lower court decision, Souza v. Travisono 368 F. Supp. 959 (1973) which reviewed and declared unconstitutional a prison regulation limiting access of paralegals to inmates.

It is clear that Judge Wyatt's assumption (that the actions

of the Warden could not in any manner be subject to his review) is wrong. In Novak v. Beto, 453 F2d. 661, the Court held that a district court is under an obligation to test a state's effort to meet the standards set down in Johnson v. Avery (393 US 483), to determine if they insure effective access to the courts. See also Cross v. Powers 328 F. Supp. 899. Gomes v. Travisono 353 F. Supp. 457.

#### POINT II

THE SOLE PROOF IN THE RECORD, BY PETITIONER, AS CORROBORATED BY THE PAPERS SUBMITTED BY THE U.S. ATTORNEY TO THIS H. COURT OF APPEALS, TEND ONLY TO SHOW THAT THE WARDEN-RESPONDENT MERELY EXCLUDED THE INTERPRETER-ASSISTANT AT THE REQUEST OF THE AUSA, AND NOT BECAUSE OF ANY OFFICIAL POLICY, REGULATION, DISCIPLINE OR EVEN PRISON SECURITY.

The US Attorney did not refute the fact that the action of the Warden was remote-controlled from his office. They did not serve any papers in response to the Order to Show Cause. In a memorandum of law submitted to this H. Court of Appeals, and not as part of the record with the lower court, citing Souza v. Travisono supra, n. 6 at page 1123, he purports that decision allows para-profesional aid only where the prisoner is well-fixed enough to hire an attorney, and that the cases do not relate to the poor - prisoner like Petitioner-Appellant, without any full licensed - attorney aid. And that is not so. The crucial constitutional



principle at play in determining the necessity of paralegal access is the more fundamental right of access to the courts, (See Ex Parte Hull, 312 US 546) and the corollary right to obtain legal assistance to facilitate such access. See Johnson v. Avery, supra; Nolan v. Scafati, 430 F2d. 548. Petitioner-Appellant is not entitled to a lawyer and if he is not assisted by his interpreter friend and law assistant, his access to the courts is null, since he has no other alternative. The issue is really a new one. And it is important to note that of all the cases litigated in the Courts, none of them involved this situation: that the Warden who traditionally offers as justification "prison security" or "discipline", in this instance, does not object.

Even in cases of discipline or security the Courts have stated (Via v. Cliff, 470 F2d. 274), that: "...the authority of prison officials to regulate the exercise of the right should not be employed to wrongfully interfere with the exercise of the right." And such regulations, must pass the basic due process test of reasonability, with the test being more or less stringent according to the character of the right taken from the prisoner. Gilmore v. Lynch, 319 F. Supp. at 109, n. 6.


#### CONCLUSION

For the reasons stated above, the decision of the District Court should be reversed.

Respectfully submitted,

Gerardo Sanchez  
o/b/o Ricardo Borroto

APPENDIX

- A. Minutes of hearing in the Southern District of New York,  
before Judge I. Wyatt, on December 13, 1974.
  - B. Copy of Judge Wyatt's endorsement denying the application.
  - C. Copy of Docket Card.
- 

1  
2 UNITED STATES DISTRICT COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 ----- x  
5 RICARDO BORROTO, :

6 Plaintiff, :

7 v. :

74 Civ. 5409

8 UNITED STATES ATTORNEY and/or WARDEN, :  
9 FEDERAL HOUSE OF DETENTION, :

10 Defendants.

11 ----- x  
12 Before:

13 HON. INZER B. WYATT,

District Judge

14 New York, December 13, 1974  
15 Room 706 - 3:00 p.m.

16 APPEARANCES:

17 RICARDO BORROTO,  
18 Pro se

19 PAUL J. CURRAN, Esq.,  
20 United States Attorney for the  
21 Southern District of New York,  
22 Attorney for Defendants,  
23 By: PETER C. SALERNO, Esq.,  
24 Assistant United States Attorney

25 GIRARD SANCHEZ, Interpreter  
- - -



1                   THE COURT:     Mr. Clerk, suppose we take the  
2  
3     matter of Borroto.

4                   There is an order to show cause for a writ of  
5     habeas corpus which I signed.

6                   What is your name?

7                   MR. BORROTO:     Ricardo Borroto.

8                   THE COURT:     You are Mr. Borroto; all right.

9                   You have no counsel?

10                  MR. BORROTO:    No.

11                  THE COURT:   Mr. Borroto, if I understand you,  
12     you simply come in here and I understand you are not trained  
13     as a lawyer but you ask me to have the government show cause  
14     why you shouldn't have a writ of habeas corpus, and the  
15     ground is that in some way the Warden of West Street is  
16     interfering with access by visitors to you.     I cannot  
17     grant the writ of habeas corpus for any such reasons.

18                  Habeas corpus   is to obtain release from confine-  
19     ment.     There are no grounds for releasing you.

20                  What you are trying to do is to get the Court  
21     to substitute my administrative powers, which are very  
22     limited, in place of those of the warden.

23                  Now, I asked the marshal to bring you over today  
24     to give you a chance to tell me what you want to do, and  
25     then my inclination is to feel that I must deny this

2 No, no, I understand Spanish fairly well but  
3 we can't deal in Spanish here. You have to address me in  
4 English.

5 THE INTERPRETER: He wants me to translate for  
6 him, your Honor.

7 THE COURT: What is your name?

8 THE INTERPRETER: Girard Sanchez.

9 THE COURT: Is Mr. Sanchez an interpreter?

10 THE INTERPRETER: I am his interpreter.

11 THE COURT: Can you speak English, Mr. Borroto?

12 MR. BORROTO: No.

13 THE COURT: Is there any reason why Mr. Sanchez  
14 shouldn't interpreter? Allright, go ahead.

15 But be very brief because I have a long calendar  
16 and I have told you what is on my mind.

17 (Through the interpreter:)

18 MR. BORROTO: Your Honor, this is not only a  
19 petition for habeas corpus but also and/or mandamus.  
20 I have only five days to file a brief before the Court of  
21 Appeals for the Fifth Circuit in New Orleans, and I don't  
22 have the right to an attorney, and I need somebody to  
23 translate my brief and present it in the court and do the  
24 proper investigation since I don't have access to law books  
25 at West Street.



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THE COURT: All right. I suggest you make  
an application to the Court of Appeals for the Fifth  
Circuit. This application is denied.

- - -

RICHARD MICHELM  
Petitioner

US ATTORNEY AND/OR WARDEN  
FED. HOUSE OF DETENTION  
Respondents

ORDER TO SHOW CAUSE AND TEMPORARY  
RESTRAINING ORDER

Attorney for  
Office of the United States Attorney

Received at the  
Date



*After hearing in open  
Court, this application  
is denied for lack of  
probable cause.*

MICROFILM




74 CAN. 5408

# JUDGE WYATT

C. Form No. 106 Rev.

[illegible]

STATISTICAL RECORD	COSTS	DATE	NAME OF RECEIPT NO.	REC.	DISB.
S. 5 mailed	Clerk	11/14/76	Smith	15	
S. 6 mailed	Marshal	11/14/76	Smith	15	
Basis of Action: <b>Petition for Writ of Habeas Corpus</b>	Docket fee				
	Witness fees				
Action arose at:	Depositions				



Ricardo Borroto vs U.S. Attorney et ano

74 Civil 5409

DATE	PROCEEDINGS	Date Order or Judgment Note
Dec 11-74	Filed Petition For Writ of Habeas Corpus	
Dec 12,74	Filed Order to Show Cause for a Writ of Habeas Corpus. dtd. 12/13/74 Wyatt J.	
Dec. 16.74	Filed Memo. End. on Order to Show Cause dtd. 12/12/74. After hearing in open court, this application is denied. So Ordered Wyatt J.	
Dec 16.74	Filed Petitioner's Notice of Appeal. (mailed copies.)	
Jan 14.75	XXXX Certified Record to the U.S.C.A.	
Feb 7.75	Filed Transcript of proceeding dtd. 12/13/74.	

LB

A TRUE COPY

RAYMOND F. BURGHARDT, Clerk

By

  
Deputy Clerk